"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001."

पंजीयन क्रमांक "छत्तीसगढ़/दुर्ग/ तक. 114-009/2003/20-01-03."

छत्तीसगढ़ राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 76-अ] रायपुर, गुरुवार, दिनांक 2 मार्च 2006—फाल्गुन 11, शक 1927

विधि और विधायी कार्य विभाग

रायपुर, दिनांक 1 मार्च 2006

क्रमांक 1739/डी-586/21-ब/छ. ग./2006.— छ. ग. उच्च न्यायालय बिलासपुर के ज्ञापन क्रमांक 1247/आर (जे) दिनांक 21-02-06 के साथ प्राप्त छ. ग. सिविल प्रोसिजर अल्टरनेटिव डिस्प्यूट रिजोल्यूशन एंड मेडिएशन रूल्स 2006 एतद्द्वारा सर्वसाधारण की जानकारी के लिए प्रकाशित की जाती है.

छत्तीसगढ़ के राज्यपाल के नाम से तथा आदेशानुसार,
ए. के. गोयल, उप-सचिव.

CHHATTISGARH CIVIL PROCEDURE ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION RULES, 2006

In exercise of the rule making power under Chapter X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Chhattisgarh is hereby issuing the following Rules :

PART I

ALTERNATIVE DISPUTE RESOLUTION RULES

Rule 1 : Title :—

These rules in Part I shall be called 'the Chhattisgarh Civil Procedure Alternative Dispute Resolution Rules 2006'.

Rule 2 : Procedure for directing parties to opt for alternative modes of settlement :—

(a) The Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89, and the parties shall submit to the Court their responses within thirty days of the first hearing.

(b) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1A of Order X, in the manner stated hereunder :

Provided that the Court, in the exercise of such power , shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit.

Rule 3 : Persons authorized to take decision for the Union of India, State Governments and others :—

1. For the purpose of rule 2, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory Corporations and all public authorities shall nominate a person or persons or group of persons who are authorized to take a final decision as to the mode of alternative Dispute Resolution in which it proposes to opt in the event of direction by the Court under Section 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate courts in this behalf as soon as such nomination is received from such Government or authorities.

2. Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause (1) shall, if it is a plaintiff, file along with the plaint or if it is a defendant file, along with or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorized to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of Alternative Dispute Resolution.

Rule 4 : Court to give guidance to parties while giving direction to opt :—

(a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which

parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely :

(i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one or other of these modes of settlement referred to in section 89 rather than seek a trial on the disputes arising in the suit ;

(ii) that, where there is no ralationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of section 89.

(iii) that, where there is a ralationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of section 89,

Explanation : disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

(iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to Lok Adalat or to judicial settelment as envisaged in clause (c) of sub-section (1) of section 89.

(v) the difference between the different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement as explained below :

Settlement by 'Arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), in so far as they refer to arbiration.

Settlement by 'Conciliation' means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his powers under sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement, and has a greater role than a mediator.

Settlement by 'Mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2006 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which effect them.

Settlement in Lok Adalat means settlement by Lok Adalat as contemplated by the Legal Services Authority Act, 1987.

"Judicial Settlement" means a final settlement by way of Compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or parson are deemed to be the Lok Adalats under the provisions of the Legal Service Authority Act, 1987 (39 of 1987) and where after such reference, the Provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

Rule 5 : Procedure for reference by the Court to the different modes of settlement :

(a) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within thirty days of the direction of the Court under clause (b) of Rule

2 and the Court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act;

(b) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat or where one of the parties applies for reference to Lok Adalat, the procedure envisaged under the Legal Services Act, 1987 and in particular by section 20 of that act, shall apply.

(c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under clause (b) of Rule 2 and then the Court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authority Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act;

(d) Where none of the parties are willing to agree to opt or agree to refer the dispute to arbitration, or Lok Adalat, or to judicial settlement, within thirty days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

(e) (i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Concilitaion Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act;

(ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application, refer the matter to mediation and then the Mediation Rules, 2006 in Part II shall apply.

(f) Where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within thirty days of the direction under clause (b) of Rule 2 seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of thirty days issue notice to the other parties to respond to the application, and

(i) in case all the parties agree for conciliation, the Court shall refer the matter to conciliation and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.

(ii) in case all the parties agree for mediation, the Court shall refer the matter to mediation in accordance with the Civil Procedure-Mediation Rules, 2006 in Part II shall apply.

(iii) in case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be. In case the dispute is referred to Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to Counciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure-Mediation Rules 2006, shall apply.

(g) (i) Where none of the parties apply for reference either to arbitration, or Lok Adalat, or judicial settlement, or for conciliation or mediation, within thirty days of the direction under clause

(b) of Rule 2, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

(ii) After hearing the parties or thier representatives on the day so fixed the Court shall, if there exist elements of a settlement which may be acceptable to the parties and there is a relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to Conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure-Mediation Rules, 2006, shall apply.

(h) (i) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for any one of the modes of alternative dispute resolution nor shall into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

(ii) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by Counsel or pleader, the counsel or pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

Rule 6 : Referral to the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation :

1. Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court, with a direction to the parties to appear before the Court on a specific date.

2. Upon the reference of the matter back to the Court under sub-rule (1) or under sub-section (5) of Section 2C of the Legal Services Authority Act, 1987, the Court shall proceed with the suit in accordance with law.

Rule 7 : Training in alternative methods of resolution of disputes, and preparation of manual :

(a) The High Court shall take steps to have training courses conducted in places where the High Court and District Courts or Courts of equal status are located, by requesting bodies recognized by the High Court or the Universities imparting legal education or retired Faculty Members or other persons who, according to the High Court are well versed in the techniques of alternative methods of resolution of dispute, to conduct training courses for lawyers and judicial officers.

(b) (i) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, other members of the Bar specially qualified in the techniques of alternative dispute resolution, for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, or authority or person in the case of judicial settlement or conciliatores or mediators.

(ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which any one of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of the above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

(c) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.

(d) Persons who have experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanelment for purposes of conciliation or mediation.

Rule 8 : Applicability to other proceedings :

The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial , maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act (66 of 1984).

PART II

CIVIL PROCEDURE MEDIATION RULES

Rule 1 : Title :—

These rules in Part II shall be called 'the Chhattisgarh Civil Procedure Mediation Rules, 2006'.

Rule 2 : Appointment of mediator :—

(a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

(b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

(c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be from the panel of mediators referred to in rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

Rule 3 : Panel of mediators :

(a) The High Court shall, for the pupose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its Notice Board, within thirty days of the coming into force of these Rules, with copy to the Bar Association attached to the original side of the High Court.

(b) (i) The Courts of the Principal District and Sessions Judge in each District or the Court of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators , within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel. and shall publish the same on their respective Notice Board.

(ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the Courts referred to in sub-clause (i) and to the Bar associations attached to each of the Courts.

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel of names shall contain a detailed Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

Rule 4 : Qualifications of persons to be empanelled under Rule 3 :

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely ;

(a) (i) Retired Judges of the Supreme Court of India ;

(ii) Retired Judges of the High Court ;

(iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.

(b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court ; or the District Courts or Courts of equivalent status.

(c) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;

(d) Institutions which are themselves experts in mediation and have been recognized as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

Rule 5 : Disqualifications of persons :

The following persons shall be deemed to be disqualified for being empanelled as mediators :

(i) any person who has been adjudged as insolvent or is declared of unsound mind.

(ii) or any person against who criminal charges involving moral turpitude are framed by a criminal court and are pending , or

(iii) any person who has been convicted by a criminal court for any offence involving moral turpitude ;

(iv) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.

(v) any person who is interested or connected with the subject matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.

(vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings.

(vii) such other categories of persons as may be notified by the High Court.

Rule 6 : Venue for conducting mediation :

The mediator shall conduct the mediation at one or other of the following places :

(i) Venue of the Lok Adalat or permanent Lok Adalat.

(ii) Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation.

(iii) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or State Bar Council, as the case may be.

(iv) Any other place as may be agreed upon by the parties subject to the approval of the Court.

Rule 7 : Preference :

The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

Rule 8 : Duty of mediator to disclose certain facts :

(a) When a person is approached in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings , without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

Rule 9 : Cancellation of appointment :

Upon information furnished by the mediator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

Rule 10 : Removal or deletion from panel :

A person whose name is placed in the panel referred in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if :

(i) he resigns or withdraws his name from the panel for any reason ;

(ii) he is declared insolvent or is declared of unsound mind ;

(iii) he is a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending ;

(iv) he is a person who has been convicted by a criminal court for any offence involving moral turpitude ;

(v) he is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment ;

(vi) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator ;

(vii) the court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deem fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel :

Provided that, before removing or deleting his name, under clause (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

Rule 11 : Procedure of mediation :

(a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :

(i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present ;

(ii) he shall hold the mediation conference in accordance with the provisions of Rule 6 ;

(iii) he may conduct joint or separate meetings with the parties ;

(iv) each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties ;

(v) each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved.

Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such officer of the Court and on such date or time as the Court may fix.

(vi) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

Rule 12 : Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908 :

The mediator shall not be bound by the Code of Civil Procedure 1908 or the Evidence Act, 1872, but shall be guided by principles of Fairness and Justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

Rule 13 : Non-attendance of parties at sessions or meetings on due dates :

(a) The parties shall be present personally or may be represented by their counsel or power of attorney holders at the meetings or sessions notified by the mediator.

(b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs.

(c) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings.

Rule 14 : Administrative assistance :

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Rule 15 : Offer of settlement by parties :

(a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

Rule 16 : Role of mediator :

The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and com municate the view of each party to the other , assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them ; he shall not impose any terms of settlement on the parties.

Rule 17 : Parties alone responsible for taking decision :

The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any dicision on the parties.

Rule 18 : Time limit for completion of mediation :

On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful ; but such extension shall not be beyond a further period of thirty days.

Rule 19 : Parties to act in good faith :

While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

Rule 20 : Confidentiality, disclosure and inadmissibility of information :

(1) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.

(2) When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.

(3) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.

(4) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to :

(a) views expressed by a party in the course of the mediation proceedings ;

(b) Documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators ;

(c) proposals made or views expressed by the mediator ;

(d) admission made by a party in the courts of mediation proceedings ;

(e) the fact that a party had or not indicated willingness had to accept a proposal ;

(5) There shall be no stenographic or audio or video recording of the mediation proceedings.

Rule 21 : Privacy :

Mediation sessions and meetings are private ; only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

Rule 22 : Immunity :

No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

Rule 23 : Communication between mediator and the Court :

(a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney.

(c) Communication between the mediator and the Court shall be limited to communication by the mediatior.

(i) with the Court about the failure of party to attend ;

(ii) with the Court with the consent of the parties ;

(iii) regarding his assessment that the case is not suited for settlement through mediation ;

(iv) that the parties have settled the dispute or disputes.

Rule 24 : Settlement Agreement :

(1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel have represented the parties, they shall attest the signature of their respective clients.

(2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

(3) Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

Rule 25 : Court to fix a date for recording settlement and passing decree ;

(1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

(2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the court shall record the settlement on the date fixed for recording the settlement, and.

(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straightaway in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled.

(ii) if the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

Rule 26 : Fee of mediator and costs :

(1) At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

(2) As far as possible a consolidated sum may be fixed rather than for each session or meeting.

(3) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payble to the mediators which shall be shared equally by the two sets of parties.

(4) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.

(5) Each party shall bear the costs for production of withnesses on his side including experts, or for production of documents.

(6) The mediators may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clauses (1), (3) and (4). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.

(7) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

(8) Where a party is entitled to legal aid under section 12 of the Legal Services Authority Act, 1987, the amount of fee payble to the mediator and costs shall be paid by the concerned Legal Services Authority under that Act.

Rule 27 : Ethics to be followed by mediator :

The mediator shall :

(1) follow and observe these Rules strictly and with due diligence;

(2) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator ;

(3) uphold the integrity and fairness of the mediation process ;

(4) ensure that the parties involved in the mediation and fairly informed and have an adequate understanding of the procedural aspects of the process ;

(5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner ;

(6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias ;

(7) avoid, while communicating with the parties, any impropriety or appearance of impropriety ;

(8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator :

(9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law ;

(10) recognize that mediation is based on principles of self determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement ;

(11) maintain the reasonable expectations of the parties as to confidentiality ;

(12) refrain from promises or guarantees of results.

Rule 28 : Transitory provisions :

Until a panel of arbitrators is prepared by the High Court and the District Court, the Courts referred to in Rule 3, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 23 of the Madhya Pradesh Civil Courts Act, 1958, and all other powers enabling, following rules relating to Case Flow Management for the subordinate courts have been made by the High Court of Chhattisgarh, and are published for general information.

CHAPTER VII-A

CASE FLOW MANAGEMENT RULES FOR TRIAL COURTS AND FIRST APPELLATE SUBORDINATE COURTS

I. Division of Civil Suits and Appeals into Tracks :—

1. Based on the nature of dispute, the quantum of evidence to be recorded and the time likely to be taken for the completion of suit, the suits shall be channeled into different tracks. Track 1 may include suits for maintenance, divorce and child custody and visitation rights, grant of letters of administration and succession certificate and simple suits for rent or for eviction (upon notice under Section 106 of Transfer of Property Act). Track 2 may consist of money suits and suits based solely on negotiable instruments. Track 3 may include suits concerning partition and like property disputes, trademarks, copyrights and other intellectual property matters. Track 4 may relate to other matters. All efforts shall be taken to complete the suits in Track 1 within a period of 9 months, Track 2 within 12 months and suits in Track 3 and 4 within 24 months.

   This categorization is illustrative and it will be for the High Court to make appropriate categorization. It will be for the judge concerned to make an appropriate assessment as to which track any case can be assigned.

2. Once in a month, the registry/administrative staff of each Court will prepare a report as to the stage and progress of cases which are proposed to be listed in next month and place the report before the Court. When the matters are listed on each day, the judge concerned may take such decision as he

may deem fit in the presence of counsel/parties in regard to each case for removing any obstacles in service of summons, completion of pleadings etc. with a view to make the case ready for disposal.

3. The judge referred to in clause (2) above, may shift a case from one track to another, depending upon the complexity and other circumstances of the case.

4. Where computerization is available, the monthly data will be fed into the computer in such a manner that the judge referred to in clause (2) above, will be able to ascertain the position and the stage of every case in every track from the computer screen. Over a period, all cases pending in his Court will be covered. Where computerization is not available, the monitoring must be done manually.

5. The judge referred to in clause (2) above, shall monitor and control the flow or progress of every case, either from the computer or from the register or data placed before him in the above manner or in some other manner he may innovate.

II. Original Suit :—

1. Fixation of time limits while issuing notice :

(a) Wherever notice is issued in a suit, the notice should indicate that the Code prescribes a maximum of 30 days for filing written statement (which for special reasons may be extended up to 90 days) and, therefore, the defendants may prepare the written statement expeditiously and that the matter will be listed for that purpose on the expiry of eight weeks from the date of issue of notice (so that it can be a definite date). After the written statement is filed, the replication (if any, proposed and permitted), should be filed within six weeks of receipt of the written statement. If there are more than one defendant, each one of the defendant should comply with this requirement within the time-limit.

(b) The notice referred to in clause (a) shall be accompanied by a complete copy of the plaint and all its annexure/enclosures and copies of the interlocutory applications, if any.

(c) If interlocutory applications are filed along with the plaint, and if an exparte interim order is not passed and the Court is desirous of hearing the respondent, it may, while sending the notice along with the plaint, fix an earlier date for the hearing of the application (then the date for filing written statement) depending upon the urgency for interim relief.

2. Service of summons/notice and completion of pleadings :

(a) Summons may be served as indicated in clause (3) of Rule 9 of Order V.

(b) In the case of service of summons by the plaintiff or a courier where a return is filed that the defendant has refused notice, the return will be accompanied by an undertaking that the plaintiff or the courier, as the case may be, is aware that if the return is found to be false, he can be punished for perjury or summarily dealt with for contempt of Court for abuse of the provisions of the Code. Where the plaintiff comes forward with a return of 'refusal', the provisions of Order 9A Rule 4 will be followed by re-issue of summons thorugh Court.

(c) If it has not been possible to effect service of summons under Rule 9 of Order V, the provisions of Rule 17 of Order V shall apply and the plaintiff shall within 7 days from the date of its inability to serve the summons, to request the Court to permit subsituted service. The dates for filing the written statement and replication , if any, shall accordingly stand extended.

3. **Calling of Cases (Hajri or Call Work or Roll Call) :**

The present practice of the Court-master or Bench-clerk calling all the cases listed on a particular day at the beginning of the day in order to confirm whether counsel are ready, whether parties are present or whether various steps in the suitor proceeding has been taken, is consuming a lot of time of the Court, sometimes almost two hours of the best part of the day when the judge is fresh. After such work, the Court is left with very limited time to deal with cases listed before it. Formal listing should be first before a nominated senior officer of the registry, one or two days before the listing in Court. He may give dates in routine matters for compliance with earlier orders of Court. Cases will be listed before Court only where an order of the Court is necessary or where an order prescribing the consequences of default or where a peremptory order or an order as to costs is required to be passed on the judicial side. Cases which have to be adjourned as a matter of routine for taking steps in the suit or proceeding should not be unnecessarily listed before Court. Where parties/counsel are not attending before the Court-officer or are defiant or negligent, their cases may be placed before the Court. Listing of cases on any day before a Court should be based on a reasonable estimate of time and number of cases that can be disposed of by the Court in a particular day. The Courts shall, therefore, dispense with the practice of calling all the cases listed adjourned to any particular day. Cases will be first listed before a nominated senior officer of the Court, nominated for the purpose.

4. **Procedure on the grant of interim orders :**

(a) If an interim order is granted at the first hearing by the Court, the defendants would have the option of moving appropriate applications for vacating the interim order even before the returnable date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

(b) If the Court passes an ad-interim ex-parte order in an interlocutory application, and the reply by the defendants is filed, and if, thereafter, the plaintiff fails to file the rejoinder (if any) without good reason for the delay, the Court has to consider whether the stay or interim order passed by the Court should be vacated and shall list the case with that purpose. This is meant to prevent parties taking adjourment with a view to have undue benefit of the ad interim orders. The plaintiff may, if he so chooses, also waive his right to file a rejoinder. A communication of option by the plaintiff not to file a rejoinder, made to the Registry will be deemed to be the completion of pleadings in the interlocutory application.

5. **Refferral to Alternate Dispute Resolution :**

(In the hearing before the Court, after comletion of pleadings, time limit for discovery and inspection, and admission and denials, of documents shall be fixed, preferably restricted to 4 weeks each)

After the completion of admission and denial of document by the parties, the suit shall be listed before the Court (for examination of parties under Order X of the Civil Procedure Code. A joint statement of admitted facts shall be filed before the said date.) The court shall thereafter, follow the procedure prescribed under the Alternative dispute Resolution and Mediation Rules, 2006.

6. **Procedure on the failure of Alternate Dispute Resolution :**

On the filing of report by the mediator under the Mediation Rules that efforts at Mediation have failed, or a report by the Conciliator under the provisions of the Arbitration and Conciliation Act, 1996, or a report of no settlement in the Lok Adalat under the provisions of the Legal Services Authority Act, 1987 the suit shall be listed before the registry within a period of 14 days. At the said hearing before the registry, all the parties shall submit the draft issues proposed by them. The suit shall be listed before the Court within 14 days thereafter for framing of issues.

When the suit is listed after failure of the attemps at conciliation, arbitration or Lok Adalat, the Judge may merely inquire whether it is still possible for the parties to resolve the dispute. This should invariably be done by the Judge at the first hearing when the matter comes back on failure of conciliation, mediation or Lok Adalat.

If the parties are not keen about settlement, the Court shall frame the issues and direct the plaintiff to start examining his witnesses. The procedure of each witness filing his examination-in-chief and being examined in cross or re-examination will continue, one after the other. After completion of evidence on the plaintiffs side, the defendants shall lead evidence likewise, witness after witness, the chief examination of each witness being by affidavit and the witness being then cross-examined or re-examined. The parties shall keep the affidavit in chief-examination ready whenever the witness's examination is taken up. As far as possible, evidence must be taken up day by day as stated in clause (a) of proviso to Rule 2 of Order XVII. The parties shall also indicate the likely duration for the evidence to be completed, and for the arguments to be thereafter heard. The Judge shall ascertain the availability of time of the Court and will list the matter for trial, on a date when the trial can go on from day to day and conclude the evidence. The possibility of further negotiation and settlement should be kept open and if such a settlement takes place, it should be open to the parties to move the registry for getting the matter listed at an earlier date for disposal.

7. Referral to Commissioner for recordal of evidence :

(a) The High Court shall conduct an examination on the subjects of the Code of Civil Procedure and Evidence Act. Only those advocates who have passed an examination conducted by the High Court on the subjects of 'Code of Civil Procedure' and Evidence Act, shall be appointed as Commissioners for recording evidence. They shall be ranked according to the marks secured by them.

(b) It is not necessary that in every case the Court should appoint a Commissioner for recording evidence. Only if the recording of evidence is likely to take a long time, or there are any other special grounds, should the Court consider appointing a Commissioner for recording the evidence. The Court should direct that the matter be listed for arguments fifteen days after the Commissioner files his report with the evidence.

The court may initially fix a specific period for the completion of the recording of the evidence by the Commissioner and direct the matter to be listed on the date of expiry of the period, so that Court may know whether the parties are co-operating with the Commissioner and whether the recording of evidence is getting unnecessarily prolonged.

(c) Commissioners should file an undertaking in Court upon their appointment that they will keep the records handed over to them and those that may be filed before them, safe and shall not allow any party to inspect them in the absence of the opposite party/ counsel. If there is delay of more than one month in the dates fixed for recording evidence, it is advisable for them to return the file to the Court and take it back on the eve of the adjourned date.

8. Costs :

So far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points which were unneces sarily raised, costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rules in force. If any of the parties has unreasonably protracted the proceedings, the Judge should consider exercising discretion to impose exempalary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates.

9. Proceedings for Perjury :

If the Trial Judge, while delivering the judgment, is of the view that any of the parties or witnesses have willfully and deliberately uttered blatant falsehoods, he shall consider (at least in some grave cases) whether it is a fit case where prosecution shoulds be initiated for perjury and order prosecution accordingly.

10. Adjournments :

The amendments to the Code have resrticted the number of adjournments to three in the course of hearing of the suit, on reasonable cause being shown. When a suit is listed before a Court and any party seeks adjournment, the Court shall have to verify whether the party is seeking adjourn ment due to circumstances beyond the control of the party, as required by clause (b) of proviso to Rule 2 of Order XVII. The Court shall impose costs as specified in Rule 2 of Order XVII.

11. Miscellaneous Applications :

The proceedings in a suit shall not be stayed merely because of the filing of Miscellaneous Application in the course of suit unless the Court in its discretion expressly thinks it necessary to stay the proceedings in the suit.

III. First Appeals to Subordinate Courts :

1. Service of Notice of Appeal :

First Appeals being appeals on question of fact and law, Courts are generally inclined to admit the appeal and it is only in exceptional cases that the appeal is rejected at the admission stage under Rule 11 of Order XLI. In view of the amended CPC, a copy of the memorandum of appeal is required to be filed in the subordinate Court. It has been clarified by the Supreme Court that the requirement of filing a copy of appeal memorandum in the subordinate Court does not mean that appeal memorandum cannot be filed in the Appellate Court immediately for obtaining interim orders.

Advance notice should simultaneously be given by the counsel for the party who is propos ing to file the appeal, to the counsel for the opposite party who appeared in the subordinate Court so as to enable the respondents to appear if they so choose, even at the first hearing stage.

2. Essential Documents to be filed with the Memorandum of Appeal :

The Appellant shall, as far as possible, file, along with the appeal, copies of essential documents marked in the suit, for the purpose of enabling the appellate Court to under stand the points raised or for purpose of passing interim orders.

3. Fixation of time limits in interlocutory matters :

Whenever notice is issued by the appellate Court in interlocutory matters, the notice should indicate the date by which the reply should be filed. The rejoinder, if any, should be filed within four weeks of receipt of the reply. If there are more parties than one who are Respondents, each one of the Respondent should comply with this Requirement within the time limit and the rejoinder may be filed within four weeks from the receipt of the last reply.

4. Steps for completion of all formalities/(Call Work) (Hajri) :

The appeal shall be listed before the registry for completion of all formalities necessary before the appeal is taken up for final hearing. The procedure indicated above of listing the case before a senior officer of the appellate Court registy for giving dates in routine matters must be followed to reduce the 'call work' (Hajri) and only where judicial orders are necessary, such cases should be listed before Court.

5. Procedure on grant of interim-orders :

If an interim order is granted at the first hearing by the Court, the Respondents would have the option of moving appropriate applications for vacating the interim order even before the return able date indicated in the notice and if such an application is filed, it shall be listed as soon as possible even before the returnable date.

If the Court passes an ad-interim ex-parte order, and if the reply is filed by the Respondents and if, without good reason, the appellant fails to file the rejoinder, Court shall consider whether it is a fit case for vacating the stay or interim order and list the case for that pupose. this is intended to see that those who have obtained ad interim orders do not procrastinate in filing replies. The appellant may also waive his right to file the rejoinder. Such choice shall be conveyed to the registry on or before the date fixed for filing of rojoinder. Such communication of option by the applicant to the registry will be deemed to be completion of pleadings.

6. **Filing of Written submissions :**

Both the appellants and the respondents shall be required to submit their written submis sions two weeks before the commencement of the arguments in the appeal. The cause-list should indicate if written submissions have been filed or not. Wherever they have not been filed, the Court must insist on their being filed within a particular period to be fixed by the Court and each party must serve a copy thereof on the opposite side before the date of commencement of arguments. there is no question of parties filing replies to each other's written submissions.

The court may consider having a Caution list/Alternative list to take care of eventualities when a case does not go on before a court, and those cases may be listed before a court where, for any reason, the scheduled cases are not taken up for hearing.

7. **Costs :**

Awarding of costs must be treated generally as mandatory in as much as it is the liberal attitude if the Courts in not awarding costs that has led to frivolous points being raised in appeals or frivolous appeals being filed in the courts. Costs should invariably follow the event and reasons must be assigned by the appellate Court for not awarding costs. If any of the parties have unreasonably protracted the proceedings, the Judge shall have the discretion to impose exemplary costs after taking into account the costs that may have been imposed at the time of adjournments.

IV. **Application/Petition under Special Acts :—**

This Chapter deals with applications/petitions filed under Special Acts like the Industrial Disputes Act, Hindu Marriage Act, Indian Succession Act etc.

The Practise directions in regard to Original Suits should mutaties mutandis apply in respect of such applications/petitions.

V. **Criminal Trials and Criminal Appeals to Subordinate Courts :—**

(a) **Criminal Trials :**

1. Criminal Trials should be classified based on offence, sentence and whether the accused is on bail or in jail. Capital punishment, rape and cases involving sexual offences or dowry deaths should be kept in Track I. Other cases where the accused is not granted bail and is in jail, should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy and food adulteration cases, etc. should be kept in Track III. Offences which are tried by special courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc. should be kept in Track IV. Track V- all other offences.

   The endeavour should be to complete Track -I cases within a period of nine months. track II and Track III cases within twelve months and Track IV within fifteen months.

2. The High Court may classify criminal appeals pending before it into different tracks on the same lines mentioned above.

(b) **Criminal Appeals :**

3. Wherever an appeal is filed by a person in jail, and also when appeals are filed by State, as far as possible, the memorandum appeal may be accompanied by important documents, if any, having a bearing on the question of bail.

4. In respect of appeals filed against acquittals, steps for appointment of amicus curiae or State Legal Aid counsel in respect of the accused who do not have a lawyer of their own should be undertaken by the registry/(State Legal Services Authority) immediately after completion of four weeks of service of notice. It shall be presumed that in such an event the accused is not in a position to appoint counsel.

5. Advance notice should simultaneously be given by the counsel for the party who is proposing to file the appeal, to the counsel for the opposite party in the subordinate Court, so as to enable the other party, to appear if they so choose even at the first hearing stage.

VI. Notice issued under S. 80 of Code of Civil Procedure :—

Every public authority shall appoint an officer responsible to take appropriate action on a notice issued under S. 80 of the Code of Civil Procedure. Every such officer shall take appropriate action on receipt of such notice. If the Court finds that the concerned officer, on receipt of the notice, failed to take necessary action or was negligent in taking the necessary steps, the Court shall hold such officer respon sible and recommend appropriate disciplinary action by the concerned authority.

VII. Note :—

Whenever there is any inconsistency between these rules and the provisions of either the Code of Civil Procedure, 1908 or the Code of Criminal Procedure 1973 or the High Courts Act or any other Statutes, the provisions of such Codes and Statutes shall prevail.

RAMKRISHNA BEHAR,
Registrar General.

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव से मुद्रित तथा प्रकाशित—2006.